

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: January 18, 2006

Opposition No. 91165596

The Heisman Trophy Trust

v.

Heisman Winners Association,
LLC

Andrew P. Baxley, Interlocutory Attorney:

On November 3, 2005, applicant filed separate motions to compel responses to its first set of interrogatories and to test the sufficiency of opposer's responses to applicant's first set of admissions. Although no brief in response to either motion is of record, the Board will decide both of applicant's motions on the merits. See Trademark Rule 2.127(a).

The Board finds initially that applicant made a good faith effort, as required by Trademark Rules 2.120(e)(1) and 2.120(h)(1), to resolve the parties' discovery dispute prior to seeking Board intervention.

With regard to applicant's interrogatories, under Trademark Rule 2.120(d)(1), the total number of written interrogatories that a party may serve upon another party pursuant to Fed. R. Civ. P. 33 shall not exceed seventy-five, counting subparts, over the course of an entire

proceeding. See Trademark Rule 2.120(d)(1); TBMP Section 405.03(a) (2d ed. rev. 2004). In determining whether the number of interrogatories served by one party on another exceeds the limit of Rule 2.120(d)(1), the Board counts each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered). If a propounding party sets forth its interrogatories as seventy-five or fewer separately designated questions (counting both separately designated interrogatories and separately designated subparts), but the interrogatories actually contain more than seventy-five questions, the Board will not be bound by the propounding party's numbering or designating system. Rather, the Board will look to the substance of the interrogatories, and count each question as a separate interrogatory. For example, if two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each question as a separate interrogatory. See *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); Calcagno, *TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 Trademark Rep. 285 (1990). If an interrogatory begins with a broad introductory clause ("Describe fully the facts and circumstances surrounding

applicant's first use of the mark XYZ, including:") followed by several subparts ("Applicant's date of first use of the mark on the goods listed in the application," "Applicant's date of first use of the mark on such goods in commerce," etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated. See TBMP Section 405.03(d) (2d ed. rev. 2004).

The Board notes that applicant's single interrogatory consists of a broad introductory clause and four subparts that seek responses with regard to any of applicant's seventy-four requests for admission to which opposer responded with anything other than an unqualified admission. The Board notes in addition that opposer responded to forty-four of applicant's seventy-four requests for admission with denials. As such, the Board finds that applicant has exceeded its permissible number of interrogatories for this proceeding.

In view thereof, applicant's motion to compel is hereby denied. Opposer need not respond to applicant's first set of interrogatories. Applicant may, however, serve revised interrogatories that do not exceed the numerical limit.

The Board turns next to applicant's motion to test the sufficiency of opposer's responses to applicant's requests for admission nos. 1-8, 31-32, 36, 38, 40, 42, 44, and 46

are inadequate. Under Fed. R. Civ. P. 36(a), a party responding to requests for admission need only admit or deny the matters set forth in the requests for admission, or detail the reasons why the party can do neither. A motion to test the sufficiency of responses to admission requests is solely a test of the legal sufficiency of those responses. See Fed R. Civ. P. 36(a); Trademark Rule 2.120(h). Because requests for admission are intended to narrow the issues for trial through stipulation to certain facts, the Board will not determine the veracity of such responses until trial. See *National Semiconductor Corp. v. Ramtron Int'l Corp.*, 265 F.Supp.2d 71 (D.D.C. 2003).

Although opposer included objections to applicant's request for admissions nos. 1-8, 36, 38, 40, 42, 44, and 46, opposer, in its responses, responded to these requests with denials of the matters set forth therein. The Board finds that these responses are legally sufficient.¹

Although opposer stated it that it lacked sufficient information to respond to request for admission nos. 31-32, opposer, in its responses, also responded to these requests with denials of the matters set forth therein. The responses are legally sufficient.

¹ As such, opposer's objections to the requests for admission at issue in applicant's motion to test the sufficiency of opposer's responses to applicant's requests for admission are moot.

In view thereof, applicant's motion to test the sufficiency of opposer's responses to applicant's request for admission is hereby denied.

Proceedings herein are resumed. The parties are allowed until thirty days from the mailing date of this order to serve responses to any outstanding written discovery requests. Discovery and trial dates are reset as follows.

DISCOVERY PERIOD TO CLOSE: 3/24/06

Plaintiff's 30-day testimony period to close: 6/22/06

Defendant's 30-day testimony period to close: 8/21/06

Plaintiff's 15-day rebuttal testimony period to close: 10/5/06

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.